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## TRANSCRIPT OF RECORD

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87

SUPREME COURT OF THE UNITED STATES

October Term, 1935

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No. 125

UNITED STATES OF AMERICA, APPELLANT,

VERSUS

EMPLOYERS PLASTERERS ASSOCIATION OF  
CHICAGO, CHICAGO PLASTERERS PRO-  
TECTIVE AND BENEFICIAL SOCIETY, LOCAL  
NO. 1, A. O. U. OF A. AND JOHN WILLIAM  
DALY.

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ALL PARTIES TO THIS CASE HAVE BEEN ADVISED BY THE  
CLERK OF THE COURT OF THE RECORDS OF THIS CASE.

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WITNESSED BY ME

Franklin D. Roosevelt, President of the United States

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 440

UNITED STATES OF AMERICA, APPELLANT,

vs.

EMPLOYING PLASTERERS ASSOCIATION OF  
CHICAGO, JOURNEYMEN PLASTERERS' PRO-  
TECTIVE AND BENEVOLENT SOCIETY, LOCAL  
No. 5 O. P. & C. F. I. A. AND BYRON WILLIAM  
DALTON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

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1-3 In United States District Court, Northern District of  
Illinois, Eastern Division

CIVIL ACTION

No. 52 C 1640

Equitable Relief Sought

UNITED STATES OF AMERICA, PLAINTIFF,

v.

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; JOURNEYMEN  
PLASTERERS' PROTECTIVE AND BENEVOLENT SOCIETY, LOCAL NO. 5,  
O. P. & C. F. I. A.; AND BYRON WILLIAM DALTON, DEFENDANTS

COMPLAINT—Filed July 31, 1952

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and alleges as follows:

## I

### JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U. S. C. Sec. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of that Act (15 U. S. C. Secs. 1, 2).

2. The defendants Employing Plasterers Association of Chicago, Journeymen Plasterers' Protective and Benevolent Society, Local No. 5, O. P. & C. F. I. A., and Byron William Dalton, as herein-after alleged, maintain offices and transact business within the Eastern Division of the Northern District of Illinois and are found therein.

4

## II

### DEFENDANTS

3. The following are named as defendants herein:

(a) Employing Plasterers Association of Chicago, a corporation organized and existing under the General Not-for-Profit Corporation laws of the State of Illinois, with its

place of business and offices in Chicago, Illinois. Said corporation, sometimes hereinafter referred to as the "Association," is a trade association whose membership consists of 39 plastering contractors doing business in the Chicago area;

(b) Journeymen Plasterers' Protective and Benevolent Society, Local No. 5, O. P. & C. F. I. A., sometimes hereinafter referred to as "Local 5," an unincorporated trade union or association of individuals chartered by and operating under the authority of the Operative Plasterers and Cement Finishers International Association of the United States and Canada. Local 5 has its place of business and offices in Chicago, Illinois. The membership of Local 5 consists of approximately 1200 journeymen plasterers and plasterers' apprentices who perform substantially all of the plastering work in the Chicago area;

(c) Byron William Dalton, who resides at 1245 North Shore Avenue, Chicago, Illinois. Byron William Dalton is president of Local 5 and was business agent of such local for many years prior to becoming president.

4. Whenever in this complaint it is alleged that the Association or Local 5 did any act or thing, such allegation shall be deemed to mean that such act was done by the respective officers, employees, agents, or representatives of the Association or Local 5.

## 5

## III

## CO-CONSPIRATORS

5. Numerous plastering contractors in the Chicago area, including those plastering contractors who are members of the Association, were co-conspirators in the combination and conspiracy hereinafter alleged.

## IV

## DEFINITIONS

6. As used herein, the term "plastering contractor" means an independent entrepreneur who is engaged in the business of entering into and performing contracts for the furnishing of plastering materials and the installation thereof in buildings. Such contracts are normally made with general contractors or builders. Plastering contractors function as managers and owners of businesses and employ journeymen and apprentice plasterers to perform plastering work.

7. As used herein, the term "Chicago area" means that area within the recognized jurisdiction of Local 5. It includes Chicago, Illinois and most of the remaining area of Cook County, Illinois.

## V

## NATURE OF TRADE AND COMMERCE

8. There are approximately 140 plastering contractors in the Chicago area who are engaged in the business of performing plastering contracts, which involve the furnishing of plastering materials and the installation thereof in buildings. In performing said contracts, said contractors sell and distribute plastering materials, as well as performing the services of installing the same, and said contracts include a charge for the plastering materials as well as the services in the installation thereof. The dollar volume of the plastering contracts entered into by the plastering contractors in the Chicago area in 1951 amounted to more than \$25,000,000.

9. Approximately 39 of the above referred to plastering contractors in the Chicago area are members of the defendant Association. The dollar volume of plastering contracts entered into by plastering contractors who are members of the defendant Association totalled in excess of \$15,000,000 in 1951, or 60% of the total amount of plastering contracting business in the Chicago area in that year.

10. The materials, herein referred to as plastering materials, supplied by plastering contractors in the performance of plastering contracts, include gypsum, vermiculite, perlite, gypsum lath, metal lath, lime, cement, cornerites, corner beads, channel irons, and tiewire. A major part of all of said plastering materials used in the performance of plastering contracts in the Chicago area is produced in States other than the State of Illinois, and is shipped in interstate commerce from said States into the Chicago area for sale and installation therein.

11. Customarily, the plastering materials sold and installed by plastering contractors in the Chicago area are purchased from building material dealers in the area who purchase said materials from out-of-State sources for resale to said plastering contractors and other customers. Substantial quantities of said plastering materials are purchased from out-of-State sources by said building material dealers in response and pursuant to prior orders placed with said dealers by plastering contractors, and, upon receipt of said materials from said out-of-State sources, said materials are then delivered to the plastering contractors who ordered the same.

12. Substantial quantities of plastering materials purchased by plastering contractors in the Chicago area are obtained from building material dealers who have in turn secured said materials from out-of-State sources in order to meet the regular anticipated demand of said plastering contractors. Said plastering materials purchased by such dealers from out-of-State sources to meet the regular anticipated demands of said plastering contractors move in a continuous

flow in interstate commerce from said out-of-State sources to the plastering contractors.

7        13. Substantial quantities of plastering materials purchased by plastering contractors through building material dealers are obtained from manufacturers, dealers, or other sources outside the State of Illinois who ship directly to the job site or place of business of said contractors in the Chicago area where they are utilized by the plastering contractor in performing plastering contracting work. Said plastering materials sold and installed in the Chicago area flow in a continuous, uninterrupted stream from their origin in States other than the State of Illinois to the site of their installation and use in buildings and other structures in the Chicago area.

14. Consumers of plastering materials ordinarily do not install said materials, and this service is customarily performed by plastering contractors, who employ and supervise skilled labor for this purpose. The service performed by plastering contractors in the Chicago area in distributing, selling, and installing plastering materials, is an integral part of, and necessary to, the movement in interstate commerce of plastering materials which are manufactured in States other than the State of Illinois and which are distributed, sold, and installed in the Chicago area. Thus, plastering contractors are conduits through which plastering materials manufactured and shipped from States other than the State of Illinois are sold and distributed to the consuming public in the Chicago area. Said plastering materials flow in a continuous, uninterrupted stream from their points of origin in States other than Illinois to their places of installation and use in buildings in the Chicago area.

15. The plastering operation is an integral part of the building construction industry, which, in the Chicago area in 1951, engaged in new building construction and remodeling to the value of approximately a half billion dollars, and the performance of said plastering operation is necessary to the completion of other building operations, including interior painting and decorating and the installation of plumbing fixtures, heating and air conditioning outlets and  
8        vents, electrical outlets and fixtures, flooring and interior wood trim, and window and door sashes. A substantial part of all of said building materials and appurtenances is produced in States other than Illinois and is sold and shipped in interstate commerce from said States to the Chicago area for distribution and use in buildings in said area.

16. The installation or use in buildings of said building materials and appurtenances is an integral part of, and necessary to, the movement in interstate commerce of said materials manufactured in States other than the State of Illinois and which are distributed,

sold and installed in the Chicago area. Substantial quantities of said building materials and appurtenances flow in a continuous uninterrupted stream from their points of origin in States other than Illinois to the places of installation and use in buildings in the Chicago area.

17. Any restraint upon or disruption in or interference with the performance of plastering work in the Chicago area necessarily and directly restrains and affects the interstate flow of plastering materials, and also constitutes a direct and substantial burden and restraint upon the interstate flow of all said other building materials and appurtenances entering into the construction of buildings in the Chicago area.

18. There are a number of large plastering contractors located outside of the State of Illinois who engage in performing plastering contracts in many states and who specialize in large construction jobs such as housing projects, office buildings, hospitals, and government buildings. In the performance of such contracts, said contractors, from their respective home offices located in States other than Illinois place orders for the shipment of building materials to job sites in different states, transport plastering mechanics and supervisory employees to said job sites, enter into arrangements for financing of their operations, and exercise control

and supervision over the performance of said contracts  
9 in other states. Said companies are engaged in interstate trade and commerce, and any restraint upon or interference with their ability to enter into or to perform plastering contracts in the Chicago area constitutes a restraint upon interstate trade and commerce.

## VI

### COMBINATION AND CONSPIRACY

19. Beginning in or about 1938, and continuing to the date of the filing of this complaint, the defendants and their co-conspirators, and others to the plaintiff unknown, have engaged in an unlawful combination and conspiracy to suppress competition among the plastering contractors in the Chicago area, and to restrict and exclude persons from engaging in the plastering contracting business in said area, in unreasonable restraint of the hereinbefore described trade and commerce among the several States, and to monopolize the interstate commerce as hereinbefore described in the sale, distribution and installation of plastering materials utilized in the Chicago area in the performance of plastering contracting work, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. Sec. 1 and 2), commonly known as the Sherman Act. Said offenses are continuing and will continue unless the relief hereinafter prayed for in this complaint is granted.

20. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and their co-conspirators, the substantial terms of which have been that they agree:

(a) That no person or firm be permitted to engage in business as a plastering contractor in the Chicago area without first securing the approval of Local 5 and the defendant Byron Dalton;

(b) That the defendant Local 5 refuse to allow its members to work for any plastering contractor who has not received the approval of Local 5 to enter into or to engage in  
10 the plastering contracting business;

(c) That no person or firm approved by Local 5 and the defendant Byron Dalton as a plastering contractor shall thereafter change its form of business organization without first securing the approval of the said defendants;

(d) That none of the members of the defendant Association perform plastering contracting work on any job with respect to which the general contractor has an unresolved dispute with another plastering contractor;

(e) That defendants Local 5 and Byron Dalton aid in the enforcement of the agreement referred to in (d) above, by instituting work slowdowns and other harassing tactics;

(f) That out-of-State plastering contractors be excluded from engaging in the plastering contracting business in the Chicago area;

(g) That Local 5 institute work slowdowns and otherwise harass and intimidate any out-of-State plastering contractor who engages in the plastering business in the Chicago area.

21. During the period of time covered by this complaint and for the purpose of effecting the aforesaid combination and conspiracy, the defendants and their co-conspirators, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, and more particularly have done, among others, the acts and things hereinafter described.

22. For many years past, the defendant Local 5 has maintained and enforced rules and regulations which require that any person who wishes to become a plastering contractor in the Chicago area must first appear before a special Contractors Examining  
11 Board established by Local 5 and composed exclusively of officers and members of that Local. The approval of that Board is a prerequisite to the ability of any plastering contractor to secure union labor in the Chicago area, or to perform plastering contracts on union jobs. Local 5 requires that a prospective plastering contractor must have been a member of Local 5 for at least five years before his application to engage in the plastering con-



tracting business will be considered. The defendant Local 5 has denied to numerous persons the right to enter the plastering contracting business in the Chicago area and has denied that right particularly to persons who have not been members of Local 5 for five years.

23. No plastering contractor in the Chicago area who has not first received the approval of the special Contractors Examining Board established by Local 5 can employ journeymen plasterers and apprentices who are members of Local 5, with the exception that plastering contractors who were in the business prior to the inception of this conspiracy have been permitted to employ members of Local 5 and to remain in business.

24. No plastering contractor in the Chicago area is permitted to alter the membership or management of his firm or organize as a corporation without first applying for and securing the approval of Local 5. Plastering contractors who have made such management changes without the prior approval of Local 5 have been subjected to penalties and fines imposed by Local 5.

25. For many years past, the defendant Association and Local 5 have had incorporated into a joint agreement a so-called "original contractor" rule. Under such rule, plastering contractors in the Chicago area, including the members of defendant Association, agree to and are required to boycott and refuse to enter into plastering contracts with any general contractor on any job on which another plastering contractor has started work or has received a contract unless the original plastering contractor gives his approval to the substitution of the contractor. The rule forces general con-

12 tractors who may have a dispute with their plastering contractor to accede to the demands of the original plastering contractor by preventing the general contractor from securing the services of a different plastering contractor.

26. This "original contractor" rule is enforced by work slowdowns against any plastering contractor violating the rule, and fining and intimidating union members who work for plastering contractors who are violating the "original contractor" rule.

27. When a general contractor has attempted to escape the effect of the "original contractor" rule by contracting with out-of-State union plastering contractors to do plastering work in the Chicago area, the defendants have harassed and intimidated such out-of-State plastering contractors in order to insure adherence to the "original contractor" rule.

28. Defendants have systematically followed the policy of preventing and discouraging all out-of-State union contractors from seeking or performing plastering contracts in the Chicago area by work slowdowns, fines on union labor, intimidation, and by other means. Defendants have been so successful in excluding out-of-State plastering contractors from the Chicago area by use of tactics such

as those described above that no out-of-State plastering contractors have undertaken to perform plastering contracts in the Chicago area for nearly twenty years, except for one veterans hospital, one federal housing project, and one State hospital.

## VII

### EFFECTS

29. The effects of the aforesaid combination and conspiracy, among others, have been as follows:

(a) The right of out-of-State plastering contractors to come into the Chicago area and perform plastering work has been unlawfully restrained and impeded.

13 (b) Competition among plastering contractors in the Chicago area has been unlawfully restrained, and the traditional American right of a person to enter into a business of his own choice without hindrance by illegal restraints of trade has been impaired and thwarted.

(c) The flow in interstate trade and commerce of building materials used in the building industry, including materials used by the plastering industry, has been unlawfully restrained

(d) The cost of building construction in the Chicago area has been artificially and illegally increased.

(e) The public has been denied the benefits in the construction industry in the Chicago area which would result from competition free from illegal restraints in the plastering phases of the building construction industry.

### PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the aforesaid combination and conspiracy entered into by the defendants and all the acts done pursuant thereto constitute an unlawful restraint of interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendants and each of them, and their directors, officers, and agents, and employees, be enjoined from continuing, renewing or reviving the unlawful combination and conspiracy hereinbefore alleged, or any combination or conspiracy having a similar purpose or effect.

3. That the defendants and each of them be enjoined from continuing in effect, or maintaining or enforcing the so-called  
14 "original contractor rule" or restriction or any other rule or restriction having a similar purpose or effect.

4. That the defendants Byron Dalton and local 5 be ordered to dissolve the so-called special Contractors Examining Board and

that the defendants and each of them be hereafter enjoined from creating or maintaining or taking part in the creation or maintenance of any other board or group which takes action or makes recommendation for the purpose or with the effect of excluding persons or firms from engaging in the plastering contractors business, or which takes action or makes recommendation for the purpose or with the effect of determining or passing upon the qualifications of any person or company to engage in the plastering contracting business; provided, however, that the judgment entered in this cause shall not prohibit Local 5 from entering into agreements with existing or prospective plastering contractors relating to wages, hours, and other legitimate terms of working conditions.

5. That the defendants be enjoined from adopting, maintaining, or enforcing any rule or restriction, or taking any action, having the purpose or effect of preventing or restricting members of Local 5 or any other persons from engaging in the plastering contracting business.

6. That the defendants and each of them be enjoined from harassing, intimidating, hindering, or preventing any out-of-State plastering contractor from submitting bids for, or entering into contracts for the performance of, or performing, plastering work in the Chicago area.

7. That the Court enter such orders with respect to the rules, by-laws, and charter of the defendant Association and of defendant Local 5 as is necessary to carry out and enforce the terms of the judgment entered in this cause.

8. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem appropriate in the premises.

15-16 9. That the plaintiff recover the costs of this suit.

JAMES P. McGRANERY,  
*Attorney General;*

NEWELL A. CLAPP,  
*Acting Assistant Attorney General;*

GEORGE B. HADDOCK,  
*Special Assistant to the Attorney General;*

OTTO KERNER, JR.,  
*United States Attorney;*

WILLIS L. HOTCHKISS,  
*Special Assistant to the Attorney General;*

E. HOUSTON HARSHA,  
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CHARLES W. HOUCHINS,

*Trial Attorneys,*  
*Suite 820, 208 South LaSalle Street,*  
*Chicago 4, Illinois,*  
*Central 6-6886.*

10

UNITED STATES OF AMERICA VS.

17-18

In United States District Court

[Title omitted]

MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM—  
Filed September 30, 1952

The defendant, EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO, moves the Court to dismiss the action because the Complaint fails to state a claim against this defendant upon which any relief can be rendered.

HOWARD ELLIS,  
THOMAS M. THOMAS,  
DON H. REUBEN,  
*Attorneys for Defendant of*

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS,  
33 North La Salle Street,  
Chicago 2, Illinois,  
RAndolph 6-2929.

19-20

In United States District Court

[Title omitted]

MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM—  
Filed October 1, 1952

The defendants, JOURNEYMEN PLASTERERS' PROTECTIVE AND BENEVOLENT SOCIETY, LOCAL NO. 5, O. P. & C. F. I. A. and BYRON WILLIAM DALTON, move the Court to dismiss the action because the Complaint fails to state a claim against this defendant upon which any relief can be rendered.

DANIEL D. CARMELL,  
*Attorney for Journeymen Plasterers, Protective and  
Benevolent Society, Local No. 5, O. P. & C. F. I. A.  
and Byron William Dalton.*

21

In the United States District Court

JOSEPH HOWARD, ET AL., PLAINTIFFS

*vs.*

LOCAL 74, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION,  
ET AL., DEFENDANTS

Civil Action

No. 53 C 125

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; ET AL.,  
DEFENDANTS

Civil Action

No. 52 C 1639

THE UNITED STATES

*vs.*

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; ET AL.,  
DEFENDANTS

No. 52 CR 331

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; ET AL.,  
DEFENDANTS

Civil Action

No. 52 C 1640

THE UNITED STATES

*vs.*

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; ET AL.,  
DEFENDANTS

No. 52 CR 332

22 TRANSCRIPT OF PROCEEDINGS ON RULING ON MOTIONS TO  
DISMISS

Before HON. J. SAM PERRY, one of the judges of said court, in his  
courtroom in the United States Court House, Chicago, Illinois, on  
Monday, July 13, 1953.

By THE CLERK: 53 C 125, Howard et al. vs. Local 74, etc.;

52 C 1639, United States vs. Employing Lathers Association of  
Chicago, etc.;

52 CR 331, United States vs. Employing Lathers Association, etc.;  
52 C 1640, United States vs. Employing Plasterers Association of  
Chicago, et al.;

52 CR 332, United States vs. Employing Plasterers Association of  
Chicago, et al.

Ruling on motions to dismiss.

23 The COURT: Gentlemen, this case has given me a great deal  
of concern. I have devoted a great deal of time to it.

Of course, for the purposes of this motion only, all of the allegations stand admitted. I say that cautiously, for the purpose of this motion only. When I come to rule I must take it as presumed that every well pleaded fact is true, in order for me to rule upon this motion, and I take it that it is true that there are the racial discriminations, for the purpose of this motion; I take it that it is true that there are the other restrictions, the five-year restriction about journeymen, and the other agreements. On that basis I have arrived at a conclusion. In the beginning I may point out that it is alleged there are 36 lathing contractors in the Chicago area, that about \$8,000,000 worth of business was done in the year 1951, and that approximately 16 of said 36 contractors are members of the defendant association, and that they did about \$5,000,000 of the

24 \$8,000,000 worth of work. In other words, they did 60 per cent, which is a very substantial part of the total amount of the lathing. I am referring now to the lathing situation. From my point of view it would not make any difference if they did 100 per cent of it, as I view the law.

I will review the heart of the indictment very briefly, referring now only to the lathing indictment, for what goes as to the lathing indictment will go for the other also, for the plasterers. The indictment alleges that customarily lathing materials installed by lathing contractors in the Chicago area are purchased from building material dealers in the Chicago area who purchase said material from out-of-state concerns for resale to said plastering contractors who in turn deliver the same to lathing contractors for installation. I am taking the Chicago area to mean the State of Illinois. As far as I can find, there is nothing in the allegations that indicates anything else than that when they speak of the Chicago area the reference is to Chicago, Cook County, DuPage County, Lake

25 County, the whole thing in this particular area here, and not crossing over any state lines. After alleging the aforesaid facts, which I am not repeating but which were in the allegations, the indictment charges that substantial quantities of lathing material are purchased from out-of-state sources by building material dealers in response to and pursuant to prior orders placed with said dealers by plastering contractors, and which building material is subse-

quently delivered to the plastering contractors and redelivered to the lathing contractors for installation.

The indictment then charges that substantial quantities of lathing material are purchased by plastering contractors for building materials, who have in turn secured said building materials from out-of-state sources in order to meet regularly anticipated demands of plastering contractors. In other words, the first allegation there is that the plastering contractors order materials from building materialmen and that the building materialmen themselves buy it out of state and it is shipped apparently to them, and then after

it has arrived in the Chicago area it is sold to the plastering  
26 contractors who then furnish it to the lathing contractors.

The second one is the same thing, except that when they place the order they get it right quickly because they have already stockpiled.

There is a third phase of the indictment. The indictment further charges that substantial quantities of building material purchased by plastering contractors through building material dealers are obtained from manufacturers and dealers and other sources outside of the State of Illinois, who ship directly to the job site or place of business of said contractors in the Chicago area for delivery to the lathing contractors. The only difference between that and the first one is that in place of the delivery going to the building contractor, the material contractor simply sends it straight to the job as a matter of convenience. There is not anything there I can see, any allegation, that the plastering contractor buys that from out-of-state himself. If he did, if there were such an allegation and if that were the fact, then we would have to go to trial on the issues, because there would then be involved commodities passing in interstate commerce. But that is not the situation as I  
27 see it here.

There is no allegation of any effect of that intrastate conspiracy upon the interstate market price of the building material involved. I might add, so far as I can see there is no allegation of any discrimination or anything that would cause a man to buy his building material in Wisconsin or in Chicago or in California, no restraint that I can find in the allegation. There is no allegation of fact of its effect upon the flow of materials into the State of Illinois. We are dealing here with a local restraint and monopoly of local labor, and when I say local I mean Illinois, restraint right here in Illinois, restraint upon local labor service, Illinois service. They do not become associated with the building material until after the building materials have been purchased and have come to a state of rest in the State of Illinois.

To make that perhaps a little clearer, it looks to me, as I view it, that whatever restraint there is takes place after all the buying and selling is done, the water line is complete and the water is being

sprayed out, so to speak, and they are picking it up in buckets  
28 and doing what they are doing with it, but they are not cutting the line above. That is the way I look at it, and I cannot see where the Sherman Act was intended by Congress to interfere with local affairs, even though they might be malicious, even though they might be economically unsound, even though they might be unfair and even though they might be illegal. For all I know, some of the actions might violate the Taft-Hartley Act; for all I know some of them might violate the Civil Rights Act. But I am not interpreting the Civil Rights Act. This indictment is brought specifically and is limited to and deals only with the Sherman Act. It is purely conjectural that this practice may remotely and indirectly affect the flow of commerce. It might do it. It might be that it has reduced the number of buildings that are built in this area, it might be it has driven building elsewhere, it might be that it has driven an industry elsewhere, but that is not alleged in the indictment and it would be purely conjectural anyway in my judgment.

There is no allegation showing these defendants intended to burden interstate commerce by this alleged conspiracy. There  
29 is no showing that they intended to burden interstate commerce, and there is no allegation of fact that it does, and, to put it frankly, if this were a situation where houses were being built, and there were the one additional allegation that after the houses were built, instead of being attached to the real estate and becoming part and parcel of the local community, that they were put on box cars and sent to Indiana or Wisconsin, if some of the materials had come from there, or to California or any other state in the nation, then you would have interference with interstate commerce that would come under the Sherman Act and you would then have these interferences entering into and affecting the actual price of the commodity as it goes from here elsewhere, and that might very well be a restraint of trade such as would come under the Sherman Act.

In the light of the authorities and the view this Court has taken of the indictments, the complaints do not state a cause of action under the anti-trust laws. I cannot bring myself to extend the law, as a mere District Court. I cannot extend the law by interpretation, because if I did extend it in this case then we  
30 would have the law covering every step from the beginning of manufacture to the final consumption, and each and every act of every kind would come under the Sherman Act. In my judgment that would not be within the intention of the Congress. If Congress wishes this Act extended it has the authority under the commerce clause in all likelihood to do so. It may be that the Supreme Court might see this matter otherwise than I do, but it certainly is a matter for the Supreme Court to interpret.



For me to take the time of this Court and to take the time of the Government and the defendants in many weeks of testimony when in my sincere judgment the indictment does not state a cause of action would not be fair to the Government, to the parties, to the Court and to the litigants. It would be a waste of time and effort to so do.

Under the law such an action as this, being dismissed, can go straight to the Supreme Court which can pass directly upon the question of how far this may be extended.

Therefore, counsel will prepare the proper orders for dismissal in accordance with their desires in this case. While I have  
31 been discussing primarily the lathing case the same motion will be entered in each of the other cases. That is the order of the court.

Mr. TIERNEY: As to the individual defendants named in the indictments, if they are under bond they will be discharged?

The COURT: Absolutely. Prepare the proper orders.

Mr. McCLASKEY: My name is William McClaskey, from Moore & Leighton, representing the plaintiff Joseph Howard.

The first motion to be called this morning was for leave to the plaintiff Joseph Howard to file an amended complaint in 30 days from the date hereof.

The COURT: I did not have that called.

The CLERK: I did not call it, Judge.

The COURT: I only ruled on the motion.

Mr. McCLASKEY: I beg your pardon. I understood——

The COURT: I will take a short recess for a minute, and then you may call that.

Mr. McCLASKEY: Will that affect the parties here, in regard to this motion?

The COURT: As far as that motion to amend the complaint  
32 is concerned, I would think that if you have a complaint on some other statute you should bring it under another statute and not seek to come in under this statute, because these other cases will be dismissed.

Mr. McCLASKEY: This is a motion to quash and, as I understand the ruling, your Honor's matter was a set matter.

The COURT: That is right.

Mr. McCLASKEY: I understood the motion of course should be called first.

The COURT: But if your case is dismissed on the set call what purpose would there be in calling a motion of course? Does your amendment purport to amend the complaint still under this particular Act?

Mr. McCLASKEY: That is my understanding. I came here for the plaintiff, for the attorneys for the plaintiff, Joseph Howard.

The COURT: Well, I don't see any point in granting you leave to file an amended complaint when I have just dismissed the whole suit here on the basis that I have arrived at. We would just be going over the same thing all over. I think the motion will be denied.

33-34 Mr. McClaskey: Motion denied?

The COURT: Then if you have other grounds or other statutes under which you wish to proceed I think it would be safer to file a separate, a completely new suit.

Motion denied.

Reporter's Certificate to foregoing transcript omitted in printing.

35 In United States District Court, Northern District of Illinois,  
Eastern Division

Civil Action No. 53 C 125

JOSEPH HOWARD, BERNARD HOWARD and PAUL HUGH, on their behalf, and on behalf of all those persons similarly situated, PLAINTIFFS

*vs.*

LOCAL 74 of the WOOD, WIRE AND METAL LATHERS, INTERNATIONAL UNION OF CHICAGO, ILLINOIS AND VICINITY; ELMER LINDSAY, Personally and President of Local 74; WILLIAM EBY, Personally and as Financial Secretary-Treasurer of Local 74; WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, A. F. OF L.; WILLIAM MCSORELY, Personally and as General President of Wood, Wire and Metal Lathers A. F. of L.; EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY, an Illinois corporation; HARVEY D. FOLLETT; EDWARD D. CHOUINARD, DEFENDANTS

Criminal Action No. 52 CR 331

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; LOCAL NO. 74 OF WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION OF CHICAGO, ILLINOIS AND VICINITY; HARRY D. FOLLETT; AND EDWARD D. CHOUINARD, DEFENDANTS

Civil Action 52 C 1639

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

EMPLOYING LATHERS ASSOCIATION OF CHICAGO AND VICINITY; ET AL.,  
DEFENDANTS

36

Criminal Action No. 52 CR 332

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; JOURNEYMEN  
PLASTERERS' PROTECTIVE AND BENEVOLENT SOCIETY, LOCAL NO. 5,  
O. P. & C. F. I. A.; and BYRON WILLIAM DALTON, DEFENDANTS

Civil Action No. 52 C 1640

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; ET AL., DEFEND-  
ANTS

MEMORANDUM—Filed July 20, 1953

All five causes under consideration present similar operations in the building trades of the Chicago area, which operations are alleged to violate the Sherman Act. A summary analysis of the operations and business practice of the lathing industry can serve to present the operations of the plastering industry because they are similar. Since the legal question in both trades is identical, this discussion relative to the lathing industry is equally applicable to the plastering trade and one opinion will serve for all of the cases at bar.

The defendants, the Employing Lathers Association of Chicago and the labor union known as Local No. 74 of the Wood, Wire and Metal Lathers and its officers, Harry D. Follett and Edward D. Chouinard, were indicted in the case at bar for violation of Sections One and Two of the Sherman Act. All of the defendants  
37 were residents of the State of Illinois and conducted and carried on their business in the State of Illinois and the acts of conspiracies charged against them were all performed in the State of Illinois.

The indictment charges that there are thirty-six lathing contractors in the Chicago area, an area consisting of the counties of Cook, Du Page and Lake, all three of which are Illinois Counties. All thirty-six of these contractors did about Eight Million Dollars worth of business in 1951. Sixteen of these lathing contractors, who were members of the defendant Employing Lathers Association of Chicago, did about Five Million Dollars worth of work in 1951 in the said three Illinois counties, which amounted to about sixty per cent of all of the lathing business in those counties.

The indictment charged that generally contracts for lathing are executed by building contractors with plastering contractors who

agree, under the terms of such contracts, to deliver lathing material and furnish labor for the lathing work required by the building contractor. The plastering contractor then enters into a sub-contract with the lathing contractor for the installation of lathing material in the building being constructed and said lathing material is furnished to said sub-contractors by the plastering contractor.

A major part of all lathing material used in lathing contracts in the said three Illinois counties is sold by manufacturers and dealers from other states to local material dealers in Illinois for resale in Illinois. They, in turn, sell said lathing materials to plastering contractors in Illinois, who then use such materials, or cause lathing contractors to use them, in constructing the work on build-  
38 ings in Illinois, which buildings remain in Illinois and do not again enter into the stream of inter-state commerce.

There are three methods of delivery used by the building material suppliers who live and conduct their business in Illinois. Those methods are as follows:

FIRST: A substantial amount of lathing materials is purchased from out-of-State sources by building material dealers in response and pursuant to prior orders placed with said dealers by plastering contractors, which is subsequently delivered to the plastering contractors and redelivered to the lathing contractors for installation.

SECOND: A substantial amount of lathing materials is purchased by plastering contractors from building material dealers in Illinois, who have, in turn, secured said material from out-of-State sources in order to meet regular, anticipated demands of plastering contractors. In other words, the purchase is made from building material dealers who stockpile plastering material.

THIRD: A substantial amount of lathing material is purchased by plastering contractors from building material dealers who order the same from manufacturers and dealers and other sources outside of the State of Illinois, who, in turn, ship the same directly to the job site or place of business of said contractors in the said three Illinois counties for delivery to the lathing contractors for performance of lathing contracting work in said three Illinois counties, commonly known as the Chicago area. It is charged that said lathing materials, so sold, and installed in Illinois, flow in a continuous and uninterrupted stream from the points of origin in states other than  
the State of Illinois, to the job site for installation and use  
39 in the buildings and other structures in Illinois.

For the purpose of ruling upon this motion before the Court, all of the allegations stand admitted and every well pleaded fact is assumed to be true.

The plastering contractor is not charged with buying from out-of-State dealers but from building material dealers in Illinois, who are not named in the indictments or complaints herein.

The indictment alleges the existence of an agreement between the Association and Local 74, whereby lathing contractors are excluded from engaging in the area trade, unless they are first approved by Local 74. Such approval is dependent upon a five year union membership, which, in turn, is restricted and reduced pursuant to arbitrary racial and family relationship standards. Disapproved contractors cannot employ union lathers; approved lathing contractors are assigned to designated plastering contractors. It is alleged that this practice has suppressed competition among the lathing contractors in the area, and has effected a monopoly among the few approved lathing contractors, and that it is an unreasonable restraint upon trade and commerce.

There is no allegation of any effect of the alleged intrastate conspiracy upon the interstate market price of the building material involved. There is no allegation of any discrimination or anything that would cause a purchaser to buy building material in Wisconsin or in Chicago or in California. There is no allegation of fact of its effect upon the flow of materials into the State of Illinois. This is wholly a charge of local restraint and monopoly by local labor and a local lathers association, all confined to three counties  
40 in the State of Illinois. The alleged restraints do not become associated with the building material or ultimate cost of buildings until after the building materials have been purchased and have come to a state of rest in the State of Illinois, so far as the stream of interstate commerce is concerned.

Whatever restraint there is occurs after all the buying and selling is completed. The flow of commerce is not unlike the flow of water and the statute is designed to prevent a break in the pipes through which interstate commerce flows across state lines and to the consumer. The statute is not designed to apply to the use the consumer makes of the articles of commerce after the consumer has completed his purchase, unless the consumer creates a new product and a new stream of commerce that again crosses state boundary lines.

The Sherman Act was not intended by Congress to interfere with local affairs, even though they might be unfair and malicious and economically unsound. This indictment is brought specifically and is limited to and deals only with the Sherman Act. It is purely conjectural whether the practice with which the defendants are charged may remotely and indirectly affect the flow of commerce. It might be that it has reduced the number of buildings that are built in three counties in Illinois; it might be it has driven building and industry elsewhere; but that is not alleged in the indictment.

There is no allegation showing these defendants intended to burden interstate commerce by this alleged conspiracy. There is no allegation of fact that it does so burden interstate commerce.

41-42 If this were a situation where portable houses were being built, and there was an additional allegation that after the

houses were built, instead of being attached to the real estate and becoming part and parcel of the local Illinois community, where all the acts are alleged to have been committed; and instead of being affixed to real estate remaining in Illinois they were loaded on box cars and sent to other states then there would be such interference with interstate commerce as would support these indictments and complaints herein.

In the light of the authorities, it is the view of this Court indictments and complaints herein do not state an offense or cause of action under the anti-trust laws.

This Court cannot extend the law by interpretation, because, if this Court did extend it in this case, then every step in commerce from the beginning of manufacture to and including the final consumption, and each and every act of every kind thereafter that might affect the quantity or price of articles of commerce would come under the Sherman Act. This Court is bound by the language of the Sherman Act and its subsequent judicial interpretations. It would be presumptuous of a District Court to extend the statute in question to cover the facts alleged in the instant indictment by breaking a new path into the wilderness of commerce law, when the higher Courts have already circumscribed pathways that clearly indicate that the jurisdiction of this Court over interstate commerce ends at the same time and place where interstate commerce itself ends.

Appropriate orders in accord with this opinion will be entered in each case forthwith.

J. S. PERRY,  
*Judge.*

43-44 In United States District Court, Northern District of Illinois,  
Eastern Division

UNITED STATES OF AMERICA, PLAINTIFF,

*vs.*

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO; JOURNEYMEN  
PLASTERERS' PROTECTIVE AND BENEVOLENT SOCIETY, LOCAL No. 5,  
O. P. & C. F. I. A.; and BYRON WILLIAM DALTON, DEFENDANTS

Civil Action No. 52 C 1640

Equitable Relief Sought

ORDER DISMISSING COMPLAINT—July 20, 1953

This cause came on to be heard upon the motions of all defendants herein, through their respective attorneys, to dismiss the complaint herein for failure to state a claim upon which relief can be granted under the Sherman Anti-Trust Laws. The Court has ex-

amined and considered the pleadings and briefs of counsel, filed in this cause. The contention of all defendants that the complaint fails to state a claim upon which relief can be granted under the Sherman Anti-Trust Laws has been considered and sustained.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint herein be dismissed as to all defendants.

ENTER:

J. S. PERRY,  
*Judge.*

Jul 20, 1953.

45-46 In United States District Court

[Title omitted]

PETITION FOR APPEAL—Filed September 18, 1953

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final decree of this Court entered on the twentieth day of July, 1953, does hereby pray an appeal from said final decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

STANLEY N. BARNES,  
*Assistant Attorney General.*

EARL A. JINKINSON,  
*Special Assistant to the Attorney General.*

Dated this 18th day of September, 1953.

47-50 In United States District Court

[Title omitted]

ORDER ALLOWING APPEAL—September 18, 1953

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of



this Court in this cause entered on the twentieth day of July, 1953, and having also made and filed its petition for appeal, assignment of errors and prayed for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

IT IS THEREFORE ORDERED AND ADJUDGED

That the appeal be and the same is hereby allowed as prayed for.

J. S. PERRY,  
*United States District Judge.*

Dated this 18th day of September, 1953.

51

In United States District Court

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed September 18, 1953

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final judgment of the district court on July 20, 1953, in the above-entitled cause, and says that in the entry of the final judgment the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that the allegations of the complaint do not show a restraint or monopolization of interstate commerce.

2. The court erred in holding that, under the allegations of the complaint, the conspiracy to restrain and monopolize which is set forth operated only upon commerce which is intrastate.

3. The court erred in adjudging that the complaint fails to state a claim upon which relief can be granted.

4. The court erred in entering judgment dismissing the complaint.

WHEREFORE, plaintiff prays that the final judgment of the district court may be reversed to the extent that it is inconsistent  
52-81 with the errors herein assigned by the plaintiff, and for such other and fit relief as to the court may seem just and proper.

STANLEY N. BARNES,  
*Assistant Attorney General.*

EARL A. JINKINSON,  
*Special Assistant to the Attorney General.*

Dated this 18th day of September, 1953.



82-86 STATEMENT CALLING ATTENTION TO THE PROVISIONS OF  
SUPREME COURT RULE 12(3) (omitted in printing)

87-96 PRAECIPE (omitted in printing)

97 Clerk's Certificate to foregoing transcript omitted in print-  
ing.

98-99 In the Supreme Court of the United States

October Term, 1953

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No. 440

UNITED STATES OF AMERICA, APPELLANT

*v.*

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO, ET AL.

On Appeal from the United States District Court for the Northern  
District of Illinois

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STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF  
PARTS OF RECORD TO BE PRINTED—Filed November 4, 1953

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a. Appellant adopts for its statement of points upon which it  
intends to rely in its appeal to this Court the points contained in  
its Assignment of Errors heretofore filed.

b. Appellant designates for printing by the Clerk of this Court  
the entire record in this cause as filed in this Court pursuant to  
appellant's praecipe to the clerk of the United States District Court  
for the Northern District of Illinois, except that Items 8, 10, 11  
and 12 of said praecipe may be omitted from printing.

November 4, 1953.

ROBERT L. STERN,  
*Acting Solicitor General.*

[fol. 100] (File endorsement omitted.)

24 U. S. OF AMERICA VS. EMPLOYING PLASTERERS ASSOCIATION, ETC.

[fol. 101] SUPREME COURT OF THE UNITED STATES

No. 440 —, October Term, 1953

UNITED STATES OF AMERICA, APPELLANT

VS.

EMPLOYING PLASTERERS ASSOCIATION OF CHICAGO, ET AL.

ORDER NOTING PROBABLE JURISDICTION—November 30, 1953

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.